APPEAL NO. 031135
FILED JUNE 25, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on March 28, 2003. The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) compensable injury does extend to and include the prior disc bulge at L3-L4 and the disc herniation at L5-S1 after August 5, 2001. The appellant (carrier) appealed the determination, arguing that hearing officer failed to consider the great weight and preponderance of the evidence; imposed an improper burden of proof on the carrier; and selectively considered only the evidence of the claimant's treating doctor and second opinion spinal surgeon. The claimant responded, urging affirmance.

DECISION

Affirmed as reformed.

It was undisputed that the claimant sustained a compensable injury on _____. The carrier asserts that it was error for the hearing officer to fail to reform the issue in dispute at the CCH to reflect the anatomical anomaly associated with the claimant's lumbar spine. The medical records in evidence reflect that the claimant has "six lumbar type vertebrae." The hearing officer's findings and conclusions reflect the fact that the various medical records identify the levels of the claimant's spine which are injured differently depending upon the numbering of the lumbar spine, as noted by one doctor "whether you count from above or below." We do not perceive the hearing officer's denial of the carrier's request to reform the issue as error. However, we reform the parenthetical reference to level L2-L3 to L4-L5 to conform to the evidence.

The claimant testified that in August 2001, he was in (city) to attend a convention for the employer. Both the claimant's testimony at the CCH and his recorded statement provide that August 5, 2001, was a day off and he played golf on that date and felt pain during his golf swing on the 17th hole. The carrier correctly notes that the hearing officer misstated in his Statement of the Evidence that the claimant was playing golf at a company event. However, the hearing officer's misstatement in this regard does not require reversal of the decision on the merits. The hearing officer was persuaded that the preponderance of the medical evidence indicates that the disc herniation at the L5-S1 level was a direct and natural result of the prior injury. The reason the claimant was playing golf does was not material to the determination of extent of injury in this case.

The carrier argues that the hearing officer selectively considered only the evidence of the claimant's treating doctor and the evidence of the second opinion spinal surgeon. We note that the hearing officer is not required to detail all of the evidence in the decision and order. *See* Texas Workers' Compensation Commission Appeal No. 93164, decided April 19, 1993. Nothing in our review indicates that the carrier's

evidence was not fully considered by the hearing officer. It was within the province of the hearing officer to decide the weight to be given to the evidence admitted at the CCH.

The carrier contends that the present case is "a classic follow-on case fact pattern." The carrier cites Texas Workers' Compensation Commission Appeal No. 021169, decided June 27, 2002, in which the Appeals Panel reversed the hearing officer's extent-of-injury determination where a fall was asserted to have resulted from a weakened knee and held that a fractured femur was "not a direct and natural result of the original compensable knee injury, rather, it resulted from instability, weakness, or lowered resistance from the compensable injury." We distinguish Appeal No. 021169 from the instant case in that the hearing officer relied on the medical records and the claimant's testimony to determine that the claimant's "current right knee problems are the direct and natural result of her compensable injury." In addition, Appeal No. 021169 deals with another body part, whereas the instant case deals with the same body area. We find no merit in the carrier's assertion that the hearing officer imposed an improper burden of proof on the carrier.

The carrier argues that expert medical evidence of causation is necessary in this matter. After reviewing the record in this case, we find that the medical records in evidence from several different doctors address whether or not the claimant's compensable injury was a producing cause of the claimant's current condition.

An extent-of-injury issue involves a question of fact to be resolved by the hearing officer, who is the sole judge of the weight and credibility that is to be given to the evidence. Section 410.165(a). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer as reformed.

The true corporate name of the insurance carrier is **ZENITH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

JAMES H. MOODY II
901 MAIN STREET
DALLAS, TEXAS 75202.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

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Thomas A. Knapp
Appeals Judge